

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
Civil Action No. 7:15-CV-0038-BR

IAN S. GOTTLIEB)
As BIOLOGICAL FATHER and)
NEXT FRIEND OF GG AND JG,)
Petitioner,) **STATE RESPONDENTS'**
) **MOTION TO DISMISS**
v.)
) **Pursuant to Fed. R. Civ. P. 12(b)(1) and (6)**
ERIC SCHNEIDERMAN, AG of)
NY STATE, HON. ELLEN)
GESMER, SUPREME COURT OF)
NEW YORK COUNTY JUSTICE,)
ERICA F. GOTTLIEB,)
Respondents.)

NOW COME State Respondents, the Honorable Ellen Gesmer, a Justice of the Supreme Court of the State of New York, New York County, and Eric T. Schneiderman, Attorney General of the State of New York, each in their official capacities, by and through the undersigned counsel, and move this Court to dismiss this action with prejudice pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. State Respondents' Motion to Dismiss Petitioner's Petition for a Writ of Habeas Corpus and Petition for a Declaratory Judgment Pursuant to 28 U.S.C. §§ 2201, 2202 should be granted on the following grounds:

1. The Petition for a Writ of Habeas Corpus is subject to dismissal pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction, as neither Petitioner nor his children are "in custody" as required by 28 U.S.C. § 2254, and Petitioner seeks habeas corpus relief from child custody determinations made by New York State Supreme Court.

2. The Petition for a Writ of Habeas Corpus is subject to dismissal as to all claims made by Petitioner on behalf of his children because Petitioner, a non-attorney, cannot represent his children.

3. The Petition for a Writ of Habeas Corpus is subject to dismissal pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction, as Petitioner failed to exhaust all available state judicial remedies as required by 28 U.S.C. § 2254(b)(1)(A) prior to seeking habeas relief from this Court.

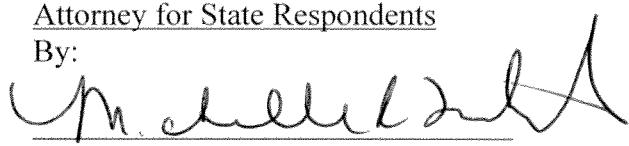
4. The Petition for Declaratory Judgment Pursuant to 28 U.S.C. §§ 2201, 2202 is subject to dismissal pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction, as this Court does not have original jurisdiction over Petitioner's purported claims, the *Rooker-Feldman* doctrine bars this Court's review of the New York State Supreme Court's determinations, the State Respondents are immune from suit under the Eleventh Amendment, and Justice Gesmer is protected by judicial immunity.

5. The Petition for Declaratory Judgment Pursuant to 28 U.S.C. §§ 2201, 2202 is subject to dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted as to all claims against Attorney General Schneiderman, as Petitioner has not stated any facts that Attorney General Schneiderman has a connection to the underlying proceeding in New York State Supreme Court.

WHEREFORE, State Respondents move this Court for an order dismissing all of Petitioner's claims, with prejudice, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted, this the 28th day of August, 2015.

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York
Attorney for State Respondents
By:



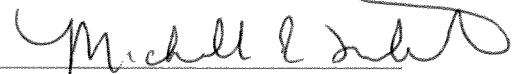
MICHELLE R. LAMBERT
Assistant Attorney General
Office of the Attorney General
State of New York
120 Broadway – 24th Floor
New York, New York 10271-0332
Telephone: (212) 416-6203
Fax: (212) 416-6009
Michelle.lambert@ag.ny.gov
NYS Reg. No. 4666657

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on August 28, 2015, I electronically filed the foregoing STATE RESPONDENTS' MOTION TO DISMISS on behalf of the Honorable Ellen Gesmer, a Justice of the New York State Supreme Court, New York County, and Eric T. Schneiderman, Attorney General of the State of New York, with the Clerk of Court using the CM/ECF system and served a copy on the Pro Se party by depositing a copy in the United States Mail addressed as follows:

**Ian S. Gottlieb
796 Washington Acres Road
Hampstead, NC 28443
*Pro se***

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: 
Michelle R. Lambert
Assistant Attorney General
120 Broadway, 24th Floor
New York, NY 10271
212-416-6023
Fax: 212-416-6009
Michelle.lambert@ag.ny.gov
N.Y. Reg. No. 466657
Attorney for State Respondents